

INDEX TO UNE ISSUES (REPLY)

	<u>Page</u>
INTRODUCTION	1
Issue III-6 UNE Combinations	1
Issue III-7 Service Conversions to UNEs	14
Issue III-8 Technically Feasible Points of Interconnection	21
Issue III-9 Local Switching.....	22
Issues III-11 Subloops	26
Issue IV-19 Network Interface Device	26
Issue III-12 Dark Fiber	33
Issue IV-14 Applicable Law	40
Issue IV-15 Applicable Law	40
Issue VI-1(E) Changes in Law	40
Issue IV-18 Multiplexing	42
Issue IV-21 Dedicated Transport	42
Issue IV-23 Line Information Database (“LIDB”)	45
Issue IV-24 Directory Assistance Database.....	49
Issue IV-25 Calling Name Database (“CNAM”).....	51
Issue IV-80 Directory Assistance	55
Issue IV-81 Operator Services	55
Issue V-3 UNE-P Routing and Billing	57
Issue V-4 LATA-wide Reciprocal Compensation.....	57
Issue V-4a UNE-P Routing and Billing	57
Issue V-7 Specific Porting Intervals for Larger Customers.....	63
Issue V-12 Off-Hours Porting	63
Issue V-12-a Three Calendar Day Porting Intervals.....	63

Issue V-13	Number Portability Administration Center (NPAC) Confirmation	63
Issue VI-1(D)	Number Portability	63
Issue VI-3(B)	Technical Standards and Specifications	69
Issue VII-10	Integrated Digital Loop Carrier (IDLC) Loop Provisioning	70

UNBUNDLED NETWORK ELEMENTS (REPLY)

Issue III-6 UNE Combinations

Verizon VA proposes here to make available all of the same network element combinations (and on the same terms and conditions) as it makes available in other states where this Commission repeatedly has held that Verizon VA's offerings satisfy the requirements of the Act and the Commission's rules.¹ Accordingly, Verizon VA's proposal fully satisfies its obligations here as well, and it should be adopted in whole.

In contrast, the Petitioners argue that Verizon VA should be compelled to do more than is (or can be) required and to combine at their behest network elements that are *not* already combined. In doing so, they rehearse the same tired arguments that they have made repeatedly in previous rulemakings and in section 271 proceedings alike. But the Commission has expressly refused to impose such a requirement. Indeed, imposing such a requirement would contravene the express terms of the Act and a binding decision by the Eighth Circuit Court of Appeals that invalidated a previous Commission rule that would have imposed such a requirement.

In 1996, in the *Local Competition Order*, the Commission addressed UNE combinations and promulgated Rule 315, certain provisions of which would have required incumbent LECs to combine network elements that are not already combined.² On appeal, the Eighth Circuit

¹ *NY Verizon § 271 Order* at ¶¶ 232-33; *MA Verizon § 271 Order* at ¶¶ 117, 119; *PA Verizon § 271 Order* at ¶ 73.

² The original Rule 315 read as follows:

Rule 315 Combination of unbundled network elements.

(continued...)

vacated those provisions of Rule 315 that imposed that requirement -- Rules 315(b)-(f) -- on the grounds that those rules were inconsistent with § 251(c)(3) of the Act. The Court stated: "While the Act requires incumbent LECs to provide elements in a manner that enables the competing carrier to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements."³ On January 25, 1999, the United States Supreme Court reversed the Eighth Circuit's opinion on Rule 315(b), which prevents the incumbent LECs from separating elements that are already combined.

(a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.

(b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, providing that such combination is:

- (1) Technically feasible; and
- (2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

(d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

(e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.

(f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

³ *Iowa Utilities I*, 120 F.3d at 813.

The Supreme Court did not address Rules 315 (c)-(f) because that portion of the Eighth Circuit's decision was not before it.⁴ The Court remanded the case to the Eighth Circuit "for proceedings consistent with this opinion."⁵

While the remand was pending before the Eighth Circuit, the Commission issued its *UNE Remand Order*, but declined to comment on Rule 315(b) and indicated its intention to await the outcome of the pending appellate review:

A number of commenters argue that we should reaffirm the Commission's decision in the *Local Competition First Report and Order*. In that order the Commission concluded that the proper reading of "currently combines" in rule 51.315(b) means "ordinarily combined within their network, in a manner which they are typically combined." Incumbent LECs, on the other hand, argue that rule 51.315(b) only applies to unbundled network elements that are currently combined and not to elements that are "normally" combined. Again, ***because this matter is currently pending before the Eighth Circuit, we decline to address these arguments at this time.***⁶

The Commission further stated:

To the extent an unbundled loop is ***in fact connected*** to unbundled dedicated transport, the statute and our rule 51.315(b) require an incumbent to provide such elements to requesting carriers in combined form. Thus ... we neither define the EEL as a separate unbundled network element ***nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are "ordinarily combined"***⁷

⁴ *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. at 393-95.

⁵ *Id.* at 397.

⁶ *UNE Remand Order* at ¶¶ 479 (emphasis added).

⁷ *Id.* at ¶ 480 (emphasis added). AT&T and WorldCom have filed Motions for Reconsideration of the *UNE Remand Order* and requested the Commission to reconsider the definition of "currently combines."

Before the Eighth Circuit, AT&T and WorldCom (together with the Commission) argued that the Eighth Circuit should reinstate the “new combination” requirements because the Supreme Court’s opinion had undermined the Eighth Circuit’s original basis for vacating that requirement. The Eighth Circuit rejected that argument and reaffirmed its decision to vacate Commission Rules 315(c)-(f) stating:

Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, “An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting telecommunications carriers to combine such elements in order to provide such telecommunications service.” ***Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall “combine such elements.”*** It is not the duty of the ILECs to “perform the functions necessary to combine unbundled network elements in any manner” as required by the FCC’s rule. *See* 47 C.F.R. § 51.315(c). We reiterate what we said in our prior opinion: “The Act does not require the incumbent LECs to do all the work.” *Iowa Utils. Bd.*, 120 F.3d at 813. Under the first prong of *Chevron*, subsections (c)-(f) violate the plain language of the statute. We are convinced that rules 51.315(c)-(f) must remain vacated.⁸

Accordingly, the Eighth Circuit has twice held that a rule that requires ILECs to combine network elements for CLECs violates the plain language of the Act.⁹ By vacating Rules 315(c)-

⁸ *Iowa Utilities II*, 219 at 759 (emphasis added).

⁹ The Eighth Circuit also corrected the Ninth Circuit’s misinterpretation of its rationale.

We are not persuaded by the respondents’ contention that the Supreme Court’s reinstatement of rule 51.315(b) affects our decision to vacate subsections (c)-(f). Nor do we agree with the Ninth Circuit that the Supreme Court’s opinion undermined our rationale for invalidating the additional combinations rule. *See U.S. West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1121 (9th Cir. 1999), *cert. denied*, 147 L.Ed.2d 1005, 2000 U.S. LEXIS 4680, 120 S.Ct. 2741 (U.S. 2000). The Ninth Circuit

(continued...)

(f), which required ILECs to perform the functions necessary to combine UNEs in any technically feasible manner, the Eighth Circuit relieved Verizon VA of the duty to combine new UNEs for requesting carriers. While Rule 315(b) is in effect, it only prohibits an ILEC from “*separat[ing]*” those combinations that are in fact already combined--or to use the Commission’s words, those that are “in fact connected”--at the time a requesting carrier places an order.

This portion of the Eighth Circuit’s decision has never been stayed and remains in effect. Accordingly, while the Supreme Court has been asked to review the decision, under the terms of the Hobbs Act, it is binding on the Commission while the appeal is pending before the Supreme Court.¹⁰

misinterpreted our decision to vacate subsections (c)-(f) as we did in invalidating subsection (b). *See MCI Telecomms. v. U.S. West*, 204 F.3d 1262, 1268 (9th Cir. 2000)(“The Eighth Circuit invalidated Rules 315(c)-(f) using the same rationale it employed to invalidate Rule 315(b). That is, the Eighth Circuit concluded that requiring combination was inconsistent with the meaning of the Act because the Act calls for ‘unbundled’ access.”) Rather, the issue we addressed in subsections (c)-(f) was who shall be required to do the combining, not whether the Act prohibited the combination of network elements. *See Iowa Utils. Bd.*, 120 F.3d at 813.

Iowa Utilities II, 219 F.3d at 759.

¹⁰ 28 U.S.C. § 2341 *et seq.* Under the Hobbs Act (28 U.S.C. § 2342(1)), the Eighth Circuit had exclusive jurisdiction to determine the legality of the Commission’s attempt to require ILECs to provide new combinations. The Hobbs Act avoids the possibility of conflicting litigation where two courts have concurrent jurisdiction to resolve the same issues by consolidating all petitions for review of Commission orders interpreting and/or implementing the Act in a single court of appeals. The Hobbs Act’s jurisdictional preclusion is broad. It not only bars direct review of an agency’s interpretation of the governing statute in courts other than the designated Hobbs Act court of appeals, but also forbids indirect review of such agency action. Consistent with these rulings, the Ninth Circuit recently held that non-Hobbs Act courts may not collaterally attack Commission decisions that purport to interpret sections of the Act. *U.S. West Communications, Inc. v. Hamilton*, 224 F.3d 1049 (9th Cir. 2000). Even if courts “doubt the soundness of the Commission’s interpretation” of the Act, they “are not at liberty to review that
(continued...)

Notwithstanding the Commission's explicit ruling that it would not use this arbitration proceeding to modify the Eighth Circuit's decision now on appeal at the Supreme Court,¹¹ AT&T and WorldCom ask the Commission to do just that.¹² AT&T claims that it is "not asking the Commission to challenge the Eighth Circuit or to rewrite its current rules on UNE availability."¹³ Instead, AT&T points to Rule 315 (b), and disingenuously claims that it is simply asking the Commission

to *clarify* that the 'currently combine[d]' standard, as used in the Commission's Rule 315(b), includes such UNEs as are ordinarily, commonly or regularly combined in Verizon's network, whether or not they are actually combined for the particular customer or location that AT&T seeks to serve.¹⁴

Rule 315(b), however, only provides that an ILEC "shall not *separate* requested network elements;" it contains no requirement to combine anything. By its own terms, the rule can only

interpretation." *Id.* at 1055. Instead, they are "required by the Hobbs Act" to apply a Commission regulation "as it is written" until the Hobbs Act reviewing court says otherwise. *Id.* See Illinois Commerce Commission, *Re Illinois Bell Telephone Company*, 00-0393, 208 P.U.R. 4th 389, 2001 WL 636876 (March 14, 2001) ("To the extent that other courts and Commission's [sic] have chosen to ignore the impact of the Hobbs Act designation of the 8th Circuit as the tribunal responsible for interpreting issues relating to TA96, we decline to follow their lead and, instead follow the rule of law.").

¹¹ Status Conference at 26 (July 10, 2001).

¹² Both AT&T and WorldCom also argue that, regardless of the law, Verizon VA should be required to combine network elements or competition will be thwarted. AT&T Br. at 107; WorldCom Br. at 97 (quotation omitted). Even if these claims were true, and they are not, they are off the mark. They do no more than address what AT&T and WorldCom claim the law should be. They have already explained this position to the Eighth Circuit, and lost. The Commission's former rules have been vacated and have been appealed to the United States Supreme Court. Consequently, the Commission is barred from imposing such a requirement.

¹³ AT&T Br. at 104.

¹⁴ *Id.* at 104 (emphasis added).

apply to elements that are, in AT&T's words, "actually combined," or in the Commission words, those that are "in fact connected." It cannot be "clarified" to create a requirement to combine previously uncombined elements. Instead, AT&T's proposal remains a direct attack on the Eighth Circuit's decision because it would require Verizon VA to combine elements that are not already combined.

For its part, WorldCom points to Rule 315(a) as the basis for its argument that the Commission should require Verizon VA to provide combinations it "ordinarily combines." In doing so, WorldCom makes the patently false claim that "in Rule 315(a), the FCC required incumbents to provide elements ordinarily combined in their network."¹⁵ Rule 315(a) does no such thing; it requires incumbent LECs to provide unbundled network elements in a manner "that allows *requesting telecommunications carriers* to combine such network elements." 47 C.F.R. § 51.315(a) (emphasis added). It contains no requirement that ILECs combine anything.

AT&T also argues that this

Commission stands in the shoes of the Virginia State Corporation Commission in this arbitration and as such, the Commission is fully empowered to resolve the issues as the Virginia State Corporation Commission might. The federal regulations are the floor, not the ceiling, of what a state commission may require in regard to the UNEs and UNE combinations that an ILEC should be obligated to provide...."¹⁶

The Commission, however, has already rejected this argument: "we would be disinclined to act beyond the authority of the FCC in acting like a state ..." and "I can tell you we're disinclined to exercise that authority."¹⁷

¹⁵ WorldCom Br. at 99.

¹⁶ AT&T Br. at 109.

¹⁷ Status Conference at 36 (July 10, 2001).

Nor could it. Even if it were true that a state commission could, consistent with the terms of the 1996 Act, invoke some independent source of state law authority to impose a broader requirement that upsets the balance established by Congress--a proposition that is itself dubious--that independent source of authority is simply not available to this Commission. On the contrary, this Commission is a creature of *federal* statute and possesses only the authority granted to it in the *federal* statute. And here, the controlling federal statute simply does not permit it to require incumbents to create new combination of elements that are not already combined.

AT&T's attempt to rely on a few state commission decisions that required ILECs to provide new UNE combinations ordinarily combined within their networks is misplaced. In addition to the fact that those decisions either ignored or misconstrued the Eighth Circuit's decision, those decisions typically purport to rely upon independent sources of authority under state law that are unavailable to this Commission. For example, the Illinois Commission decision relied on by AT&T not only ignored the Eighth Circuit's rationale for vacating Rules 315(c)-(f), but it also relied on state law to support its holding that Ameritech Illinois should be required under its tariff to provide UNE combinations as requested by the CLECs.¹⁸ Likewise, the Wisconsin Commission relied upon state law as the basis for its ruling.¹⁹ And the Kentucky Commission relied only on "the Act's clear expression of congressional intent to

¹⁸ *Illinois October 16, 2001 Order* at 84-87.

¹⁹ See AT&T Br. at 106. The Public Service Commission of Wisconsin inappropriately determined that it was "not bound by the language of the Eighth Circuit holding" and relied upon its state authority in Wisconsin statutes §§ 196.02, 196.04, 196.219(3)(a) and (3)(f), 196.219(4)(a), and 196.37(2) to order Ameritech to provide combinations ordinarily combined in Ameritech's network. Public Service Commission of Wisconsin, *Investigation Into Ameritech Wisconsin Operational Systems Support*, Docket No. 6720-TI-160, 2001 Wisc. PUC LEXIS 20, *24 (Sept. 25, 2001).

ensure that competition in local telecommunications moves forward,” without addressing the limited scope of the Act’s requirement to provide combinations of elements.²⁰

Moreover, AT&T ignores the fact that some of the very state commission decisions it cites were decided before the Eighth Circuit’s ruling, and these state commissions made clear that they would reconsider their decisions if the Eighth Circuit reached a different conclusion (which it has). Both the Georgia and Tennessee state commission decisions recognized that “in the event that the Eighth Circuit Court of Appeals determines that ILECs have no legal obligation to combine UNEs under the Federal Act, the Commission will reevaluate its decision on this issue.”²¹

Likewise, AT&T and WorldCom ignore other state commission decisions, such as the Florida Public Service Commission’s recent ruling, that expressly recognize that “adoption of a more expansive definition of ‘currently combines,’ as AT&T requests, would be inconsistent with the Eighth Circuit Court’s July 18, 2000 decision.”²² In another case, that same commission

²⁰ Kentucky Public Service Commission, *Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement With BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Case No. 2000-465, Order, 2001 Ky. PUC LEXIS 970 (June 22, 2001).

²¹ Georgia Public Service Commission, *In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10682-U, PUR 4th, *Slip Opinion* (Feb. 2, 2000), Tennessee Regulatory Utility Commission, *In re: Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc. and Time Warner Telecom of the Mid-South, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00797, *Petition for Arbitration of ITCDeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Petition of NEXTLINK TENNESSEE LLC for Arbitration of Interconnection with BellSouth Telecommunications, Inc.*, Docket No. 98-00123, 2000 Tenn. PUC LEXIS 887 (April 25, 2000).

²² Florida Public Service Commission, *In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252*, Docket (continued...)

also expressly held that “BellSouth is not required to combine unbundled network elements that are ordinarily combined in its network”²³ Likewise, the New Hampshire Public Utility Commission has held that “[i]n light of the Eighth Circuit reaffirmation and the fact that the Supreme Court did not address the issue, we will not require the combination of UNEs that are not already combined.”²⁴ The North Carolina Utilities Commission ruled that “the ILECs’ combinations obligations remain only what they clearly are at the present time--that is, generally speaking and absent a special mandate to do so . . . an ILEC is only obligated to provide combinations to a [CLEC] that it has already combined for a specific customer.”²⁵ The South Carolina Public Service Commission similarly has held that “based upon the FCC *UNE Remand Order* and the Eighth Circuit’s decision, . . . BellSouth is not required to combine network elements that are not in fact already combined in its network.”²⁶

No. 000731-TP; Order No. PSC-01-1402-FOF-TP, 2001 Fla. PUC LEXIS 825, *27 (June 28, 2001).

²³ Florida Public Service Commission, *In re: Petition by MCI Metro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the BellSouth Telecommunications Act of 1996*, Docket No. 000649-TP; Order No. PSC-01-0824-FOF-TP, 2001 Fla. PUC LEXIS 505, *57 (March 30, 2001).

²⁴ New Hampshire Public Utilities Commission, *In re: Bell Atlantic*, DE 97-171, Order No. 23,738, 210 P.U.R.4th 363, 2001 WL 1002726 (July 6, 2001).

²⁵ North Carolina Utilities Commission, *In re Determine Permanent Pricing for Unbundled Network Elements*, Docket No. P-100, Sub 133d, 2001 WL 811182, *145-46 (June 7, 2001).

²⁶ South Carolina Public Service Commission, *In re IDS Telecom, LLC*, Docket No. 2001-19-C, Order No. 2001-286, 2001 WL 902036, at *9 (April 3, 2001).

To the extent that AT&T raises more particularized claims relating to the specific contract language proposed by Verizon VA, its claims are equally unavailing. In the first place, AT&T is wrong in claiming that Verizon VA provided an “11th hour offer” and that Verizon VA has failed to offer language effectuating this offer.²⁷ In its Direct Testimony, *filed on July 31, 2001*, Verizon VA recognized that

Notwithstanding the current legal standard, Verizon VA will provide new combinations of UNE Platform at new and existing locations where facilities are available and currently combined, even though retail service has not been activated over those facilities, provided that no new construction is required to do so and the CLEC pays any non-recurring charges associated with activating the facilities.

Verizon VA Ex. 1 at 4. Language to give effect to this provision is contained in § 11.12.1 of Verizon VA’s proposed AT&T contract.

Moreover, despite its feigned confusion, AT&T correctly understands Verizon VA’s proposed language.²⁸ The language does exclude new EELs, as it should.²⁹ Verizon VA provides existing loop transport combinations in a manner consistent with the *Supplemental Order Clarification* and the provision of new EELs is appropriately not covered by this UNE-P offer. AT&T also correctly understands that Verizon VA will not construct new facilities. Verizon VA is not required to undertake new construction for AT&T and the exclusion is

²⁷ AT&T Br. at 107-08.

²⁸ *Id.* at 107.

²⁹ *UNE Remand Order* at ¶¶ 478-79 (“we neither define the EEL as a separate network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are “ordinarily combined....”)

entirely consistent with Verizon VA's legal obligations.³⁰ Finally, AT&T's complaint about a "glue charge" is misplaced. Verizon VA does not propose to impose a glue charge; but to the extent that Verizon VA is required to do any work to its network on behalf of a CLEC, it is entitled to recover the costs it incurs to do so.³¹

WorldCom's claims also miss the mark as to Verizon VA's UNE-P offering: "Verizon also indicated it would provide any combinations necessary to provide service to a new home, or to provide second lines."³² WorldCom misconstrues the record, as Verizon VA did not agree to provide "any" combination. Verizon VA actually stated that if "there were facilities, if the cable had been placed out to that new subdivision and it was a matter of, for example, cross-connecting a drop wire to the terminal ..., they would be eligible for platform-type services." Tr. 62. This is entirely consistent with Verizon VA's direct testimony where it offered to

provide new combinations of UNE Platform at new and existing locations where facilities are available and currently combined, even though retail service has not been activated over those facilities, provided that no new construction is required to do so and the CLEC pays any non-recurring charges associated with activating the facilities.³³

³⁰ Iowa Utilities I, 120 F.3d at 812-13 ("subsection 351(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network--not to a yet unbuilt superior one.")

³¹ Iowa Utilities II, 219 F.3d at 750 ("The reality is that Congress knew it was requiring the existing ILECs to share their existing facilities and equipment with new competitors as one of its chosen methods to bring competition to local telephone service, and *it expressly said that the ILEC's costs of providing those facilities and that equipment were to be recoverable by just and reasonable rates*")(emphasis added); see also 252(d)(1)(A)(i).

³² WorldCom Br. at 97 (citing Tr. 62).

³³ Verizon VA Ex. 1 at 4.

Finally, WorldCom claims that Verizon VA is attempting to “lock the customer into Verizon service”³⁴ through its proposed “anti-gaming” provision. This is not so. The provision is intended to prohibit a CLEC from inducing a Verizon VA customer “to order services from Verizon so [the] CLEC can then flip them” immediately, thereby giving the CLEC access indirectly to a new combination that the CLEC itself could not obtain directly. Tr. 75. The intent of this provision is not to prohibit customer migration to a CLEC, and the proposed anti-gaming contractual provision would not apply when a customer simply chooses to order services that require construction of facilities and later decides to change them. Tr. 79.

³⁴ WorldCom Br. at 101.

Issue III-7 Service Conversions to UNEs

1. Service Disruption During Conversions (Sub-Issue III-7(a))

AT&T incorrectly portrays Verizon VA's objection to §§ 11.13 *et seq.* of AT&T's proposed contract, which forbids **any** service interruptions during any type of service conversion to UNEs. Verizon VA has stated it would not interrupt service in converting special access to EELs.³⁵ Beyond that, Verizon VA does not "quarrel," as AT&T alleges, with AT&T's proposed contract language over the "the basic network changes that Verizon [VA] might make, long after the conversion process, that might affect a converted circuit."³⁶ Instead, Verizon VA is concerned about the absolute prohibition on disconnection, separation, alteration or change in the equipment and facilities during the conversion process.³⁷ In fact, AT&T's Witness Pfau conceded that there are certain situations in which a service interruption may be necessary.³⁸ Witness Pfau argued that the limited exceptions cited by Verizon VA when disruption might occur³⁹ should not "consume" the general prohibition of service disruptions.⁴⁰ While Verizon VA has no intention or interest in disrupting service, AT&T's proposed § 11.13 inappropriately

³⁵ See Verizon VA UNE Br. at 18; § 11.13.2 to Verizon VA's proposed AT&T contract; § 17 of the Network Element Attachment to Verizon VA's proposed WorldCom contract.

³⁶ AT&T Br. at 115.

³⁷ See Verizon VA Ex. 23 at 18; AT&T Br. at 113.

³⁸ AT&T Ex. 2 at 17.

³⁹ Verizon VA explained when disconnections might occur: 1) when an end user is served over an integrated digital loop carrier (IDLC) and the CLEC orders a loop to serve that customer, so that Verizon VA has to provide a different loop to that customer; 2) during an unbundled "hot cut" where a "live" Verizon VA dialtone customer's loop is disconnected from Verizon VA's switch and reconnected to a CLEC's collocated equipment. Verizon VA Ex. 23 at 18.

⁴⁰ *Id.*

prohibits service interruptions in all cases, regardless of the circumstances. In contrast, Verizon VA's proposed language in § 11.13.2 provides the necessary flexibility in processing service conversions:

When an existing special access service employed by AT&T is eligible to be converted to EELs, Verizon shall not physically disconnect, separate, alter or change in any other fashion equipment and facilities employed to provide the service being replaced, except upon mutual agreement of both Parties, e.g. in the event that the conversion cannot be accomplished without disconnecting, separating or altering such equipment or facilities.

This language is more acceptable because it allows for a service interruption in circumstances that even AT&T's witness admits may exist. Verizon VA will "cooperate in every way to avoid disruptions of service," but contract provisions stating that there can *never* be a physical interruption when undertaking conversions ignore reality. Tr. 246. Verizon VA has proposed similar language to WorldCom in § 17 of the Network Element Attachment to Verizon VA's proposed WorldCom contract.

AT&T advances a new argument with respect to Verizon VA's required maintenance of EELs after conversion from special access. AT&T contends that the maintenance of special access *service* was through the operational support system (OSS) *UNE* that upon conversion cannot be uncombined pursuant to Rule 315(b).⁴¹ There is no support for this novel suggestion that maintenance of special access service is performed through an unbundled "OSS UNE" and none is cited by AT&T. Moreover, this argument is wrong because it is AT&T that is terminating special access service to convert to UNEs (EELs) that primarily must be used to

⁴¹ AT&T Br. at 115 ("... Verizon may not 'disconnect' OSS UNEs employed to support wholesale/access UNEs employed to support EELs....").

provide local dial tone services. Indeed, if AT&T is correct, presumably Verizon VA should be charging AT&T for the use of the “OSS UNE” along with the charge for special access.

AT&T alleges that the EEL must be maintained at parity with the special access service that the EEL replaces,⁴² rather than maintained in the same manner as its retail analogue, dial tone service. Tr. 262-63. This misstates Verizon VA’s parity obligation under the Act. Parity of service requires Verizon VA to provide service to its retail customers similarly to that provided by CLECs using unbundled network elements.⁴³ Here, AT&T will use the EEL to provide dial tone service, the appropriate retail analogue is dial tone service, and the maintenance of those two service should be equivalent. Tr. 262.

2. Ordering Process (Sub-Issue III-7(b))

Verizon VA now provides a “reasonably standardized manner” for conversion of special access to EELs. AT&T Ex. 2 at 24. Verizon VA has proposed in § 11.13.3 of its proposed contract to accommodate bulk conversions electronically and eliminate the need for individual LSRs and ASRs. In addition, Verizon VA has spreadsheet ordering Guidelines available to all CLECs on its web page that allow for bulk ordering of service conversions.⁴⁴ Verizon VA Ex. 23 at 19; Tr. 273-74. AT&T complains that the website Guidelines may be unilaterally changed by Verizon VA at any time, and therefore asks that Verizon VA “[formalize] the process and

⁴² *Id.*

⁴³ Rule 311(b).

⁴⁴ One point of contention is AT&T’s complaint that Verizon VA’s ordering process requires tedious documentation such as access service requests (ASRs) or local service requests (LSRs). Tr. 104. Verizon VA’s spreadsheet process does not require the CLECs to submit individual ASRs or LSRs for conversions. Tr. 103-04; 273-74. Moreover, to be absolutely clear, Verizon VA offers this bulk ordering process for EEL conversions, not other UNEs or new EELs.

[make] it mandatory.”⁴⁵ This demand incorrectly assumes that Verizon VA will not follow the change of control process currently in place. Verizon VA has consistently used the change control process (Tr. 271-73) and, in response to a Staff question at the end of the discussion of this issue, neither AT&T nor Verizon VA disagreed that there remained “no issue” with regard to the “order processing and billing between AT&T and Verizon.” Tr. 275.

Verizon VA will promptly modify the billing rates after the conversion of a service. Tr. 99. When a CLEC submits a conversion request, Verizon VA processes the request and the new rates become effective on the first day of the next month. Tr. 100. AT&T claims that Verizon’s “implementation proposal... delays conversion needlessly, because in the vast majority of cases no physical work will be necessary to implement the conversion.”⁴⁶ This position, however, fails to account for the administrative procedures required to effectuate the billing changes. Tr. 99-101. A uniform “conversion interval” allows Verizon VA to have one billing change process for all CLECs regardless of when the request is made during the month. Furthermore, Verizon VA’s conversion interval benefits CLECs because the rates still take effect on the first day of the next month regardless of the length of time necessary to complete the request, even if the actual terms of the conversion take some time to negotiate or implement. Tr. 101.

⁴⁵ See AT&T Br. at 119.

⁴⁶ *Id.*

3. Termination Liability (Sub-Issue 7(c))

The Commission has already ruled, on several occasions, that AT&T must pay termination liability when it converts special access services to EELs. In the *UNE Remand Order*, the Commission held:

We note, however, that any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts.⁴⁷

The Commission has reaffirmed this ruling in approving Verizon's §271 applications in three states. In the Pennsylvania decision, for example, the Commission observed that:

Verizon's position in regards to the conversion of special access circuits to EELs, as presented in this docket, complies with our current rules and that commenters have not presented evidence that Verizon has systematically deviated from its stated policies for such conversions. We further note that 'current rules do not require incumbent LECs to waive tariffed termination fees for carriers requesting special access circuit conversion.'⁴⁸

AT&T acknowledges the Commission's ruling in the *UNE Remand Order*, but claims that it is only required to pay "appropriate" termination fees, thus questioning what termination fees are appropriate.⁴⁹ According to AT&T, however, Verizon VA "should not receive *any* termination payments when AT&T converts special access to UNEs."⁵⁰ In essence, AT&T is arguing that the termination fees set forth in Verizon VA's tariffs are not reasonable, even

⁴⁷ *UNE Remand Order* at n.985.

⁴⁸ *PA Verizon § 271 Order* at 43, ¶ 75. *See also, MA Verizon § 271 Order* at 124, ¶ 220; *NY Verizon § 271 Order* at 195, ¶ 390.

⁴⁹ AT&T Br. at 121.

⁵⁰ *Id.* at 125 (emphasis added).

though they were approved by the Commission. The Commission, however, has already rejected a similar attempt by AT&T to avoid paying any termination fees.

In the same Pennsylvania § 271 decision discussed above, the Commission held that a challenge to the appropriateness of Verizon's termination liability tariff provisions would be through a direct challenge to the tariff:

To the extent that commenters assert that Verizon's tariffed termination fees are not just and reasonable, the appropriate forum to challenge such fees is in the appropriate federal or state review of the specific tariff at issue.⁵¹

Although AT&T fails to mention this decision, it does reject the Staff's suggestion, made at the hearing, that AT&T should challenge Verizon VA's tariff if it believes the termination fees in that tariff are unreasonable.⁵² AT&T candidly admits that a tariff challenge would not help because "AT&T is seeking retroactive rather than future relief."⁵³ This admission makes AT&T's position quite clear. AT&T is arguing that any special access service it wants to convert to an EEL should be treated as if it always were an EEL, notwithstanding when or how it was ordered, or what termination liability AT&T agreed to pay when it ordered the special access service. AT&T is essentially arguing that the requirement that Verizon VA provide EELs should be given effect retroactively to the earliest date that AT&T ordered a special access service it now wants to convert to an EEL. There is absolutely no basis for this argument. Indeed, had the Commission agreed with that proposition, it never would have held that AT&T is required to pay termination fees when it converts special access services to EELs.

⁵¹ *PA Verizon § 271 Order*.

⁵² AT&T Br. at 124.

⁵³ *Id.*

With a rhetorical flourish, AT&T claims that Verizon VA's lawful tariff rates "extort supra-competitive rates from customers."⁵⁴ This is clearly false. When AT&T ordered special access services from Verizon VA, it had a choice of payment options, and could reduce the rate by agreeing to take the service for a longer period. At the same time, however, it agreed to pay a termination fee if it did retain the service for as long as it had agreed. The tariff termination liabilities were in the tariff at that time and do nothing more than adjust the arrangement for the term actually utilized by AT&T. Tr. 213. Thus, if AT&T agreed to a five year term and subsequently decided to convert the service to an EEL after two years, the termination fee simply adjusts the rate to the special access rate AT&T would have paid had it initially ordered service for a two-year term. The Commission specifically has previously upheld this type of termination liability and allowed ILECs to charge

the difference between (1) the amount the customer has already paid and (2) any additional charges that the customer would have paid for service if the customer had originally taken a shorter term arrangement corresponding to the term actually used, plus interest to be calculated at the IRS rate for tax refunds, compounded daily. This procedure is designed to put both the LEC and the customer in the same position they would have been in if the customer had originally chosen a shorter-term arrangement.⁵⁵

Verizon VA is not extorting anything from anyone, but is simply collecting the lawful tariff rate for the service it provided. Accordingly, the Commission should reject AT&T's attempt to avoid paying any termination fees when it converts a special access service to an EEL.

⁵⁴ AT&T Br. at 125.

⁵⁵ Second Memorandum Opinion and Order on Reconsideration *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, at 40 (August 3, 1993) (footnotes omitted).

Issue III-8 Technically Feasible Points of Interconnection

Verizon VA provides access to its network elements in accordance with the Commission's rules. Most often, access is achieved via collocation. WorldCom and AT&T, however, are unhappy with Verizon VA's unwillingness to include in the interconnection agreements broad language that would allow both Petitioners virtually unlimited access to Verizon VA's network.⁵⁶ Contrary to the Petitioners' arguments, Verizon VA's position has never been that collocation is the only means of accessing its UNEs. Verizon VA Ex. 23 at 8-9. If a CLEC requests access to a UNE in a manner not generally offered by Verizon VA, it may request such access through the BFR procedures described in the proposed interconnection agreements.⁵⁷ Verizon VA will then evaluate the request for technical feasibility and compliance with applicable law and, if appropriate, develop a rate for that access.

⁵⁶ WorldCom Br. at 103-04; AT&T Br. at 134-36. Verizon VA has proposed several exceptions to WorldCom and AT&T. For example, Verizon VA offers access to EELs where currently combined and allows conversions to EELs under the *Supplemental Order Clarification*. Conversion to EELs requires collocation at only one central office under local use options 1 and 2; option 3 does not require collocation. *Supplemental Order Clarification* at ¶ 22. In addition, access to feeder subloops is at remote terminals and access to distribution subloops is through connection between Verizon VA's feeder distribution interface (FDI) and a CLEC-owned interconnection cabinet within close proximity of Verizon VA's FDI. Access to multiple dwelling units (MDUs) or multi-tenant environments (MTEs) is available through several methods as set forth in Verizon VA's CLEC Handbook, AT&T Ex. 22.

⁵⁷ Verizon VA's proposed AT&T contract, § 13.3; Verizon VA's proposed WorldCom contract, Exhibit B.